

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-207980

DATE: July 13, 1982

MATTER OF: Flight Refueling, Inc.

DIGEST:

1. Below-cost bid provides no basis for challenging the award of a Government contract to a responsible prospective contractor.
2. Procuring agency's award of a contract constitutes an affirmative determination of responsibility, which GAO will not review in the absence of a showing of fraud on the part of procuring officials or an allegation of failure to apply definitive responsibility criteria.
3. Allegations of anti-trust violations and collusive bidding are matters for the Attorney General, and GAO will not consider them in its bid protest function.
4. GAO will not consider alleged violation of Vinson-Trammell Act, requiring contractors and subcontractors to pay excess profits into the Treasury, since implementation of this statute is the responsibility of the Secretaries of the Treasury and of the military department concerned.

Flight Refueling, Inc. protests the award of a contract by the Navy's Aviation Supply Office, Philadelphia, Pennsylvania, for 338 coupling assemblies to be used in aerial refueling systems. The contract, No. N00383-82-C-4349, was awarded June 8, 1982, to Sargent Fletcher Corporation. We dismiss the protest.

The protester alleges that the unit price offered by Sargent Fletcher, \$1,675, is below-cost, and that it reflects an effort on the part of that firm and/or a major supplier, Parker Hannifin Corporation, to eliminate competition in the development and production of aerial refueling systems and components.

Flight Refueling bases its protest on the unit prices which it paid to Parker Hannifin for couplings-- a qualified product which comprises approximately 95 percent of the end item--under three other Navy contracts; these prices ranged from \$1,890 for a quantity of 116 to \$3,175 for a quantity of 383. Flight Refueling points out that Sargent Fletcher's lower unit prices on the protested contract apparently also include overhead and profit.

The firm further protests that the below-cost bid either directly violates or violates the intent of a judgment in an anti-trust suit against Parker Hannifin. In addition, the protester states that in its own dealings with Parker Hannifin, involving a terminated purchase order for couplings, Parker Hannifin has claimed anticipatory profits of more than 20 percent, an amount which Flight Refueling alleges violates the Vinson-Trammell Act.

A below-cost bid provides no basis for challenging the award of a Government contract to a prospective contractor that is found to be responsible. Technical Food Services, Inc., B-203742.2, September 15, 1981, 81-2 CPD 219. In this case, the Aviation Supply Office's award of the contract to Sargent Fletcher constituted an affirmative determination of responsibility, which our Office will not review unless there is a showing of fraud on the part of procuring officials or an allegation of failure to apply definitive responsibility criteria. Global Crane Institute, B-204555, September 18, 1981, 81-2 CPD 226. Neither exception is present here.

The alleged violation of the anti-trust judgment against Sargent Fletcher's supplier is a matter for the Attorney General, McQuiston Associates, B-199013, September 1, 1981, 81-2 CPD 192, as are allegations of collusive bidding. Northwest Janitorial Service, B-203258, May 28, 1981, 81-1 CPD 420.

As for the alleged violation of the Vinson-Trammell Act, which requires contractors and subcontractors for military aircraft to pay excess profits into the Treasury, implementation of this statute is the responsibility of

the Secretaries of the Treasury and of the military department concerned, who require contractors and sub-contractors to report to them as prescribed by the Act. See 10 U.S.C. § 2382 (1976), as amended by the Act of September 8, 1980, Public Law 96-342, Title X § 1005, 94 Stat. 1120. Flight Refueling has sent copies of its protest to the Departments of Justice and of the Treasury.

The protest is dismissed.

Harry R. Van Cleve
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Acting General Counsel